IDAHO
PUBLIC UTILITIES
COMMISSION

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April 11, 1996

VIA FED EX

APR 12 1996

FCC MAIL ROOM

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street NW
Washington DC 20554

RE: CC Docket No. 96-45, FCC No. 96-93

Dear Secretary:

Enclosed for filing is an original and six copies of Comments of the Idaho Public Utilities Commission in CC Docket No. 96-45, *Federal-State Joint Board on Universal Service*. Kindly acknowledge receipt of this document by date stamping the duplicate copy of this letter and returning it in the enclosed self-addressed stamped envelope.

Sincerely,

Weldon B Stutzman for
Donald L. Howell, II
Deputy Attorney General

bls/L-caton.dh

Enclosures

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**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

APR 12 1996

FCC MAIL ROOM

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| **IN THE MATTER OF** | ) | |
| | ) | **CC Docket No. 96-45** |
| **FEDERAL-STATE JOINT BOARD ON** | ) | |
| **UNIVERSAL SERVICE** | ) | **FCC No. 96-93** |
| | ) | |

## COMMENTS OF THE IDAHO PUBLIC UTILITIES COMMISSION

The Idaho Public Utilities Commission (IPUC) submits these comments in response to the Federal Communications Commission's (FCC) March 8, 1996 Notice of Proposed Rulemaking (NPRM) and Order Establishing Joint Board in the above-captioned proceeding. The NPRM seeks comment on its proposed rulemaking to: (1) define the services to be supported by the federal universal service mechanisms; (2) define those support mechanisms; and (3) recommend changes to regulations to implement universal service directives of the Telecommunications Act of 1996 (the Act).

## I. GENERAL COMMENTS ON NPRM

### A. The Essence of Deregulation

The issuance of an NPRM in this docket and the ensuing comment process seems fraught with "misplaced symmetry." The term "symmetry" refers to the assumption that regulation and deregulation can be thought of from a regulatory standpoint as mirror images of one another, that regulation and deregulation are merely opposite sides of the same coin. The process followed in

this docket aimed at deregulation is unfortunately identical to the process used in dockets aimed at further regulation.

A move toward deregulation should be different from regulation in substance. The commitment to development of minutely detailed rules and the point-by-point explication of nearly every word of the appropriate sections of the Telecommunications Act of 1996 seems to be an unnecessary invitation to further regulation rather than evidence of a commitment to embark on the process of deregulation initiated by the U.S. Congress. Begin the process of deregulation with a reduction of the number of rules. Evidence some faith in the workings of a telecommunications market and leave many of the details to negotiation between the parties now empowered to provide telecommunications service across this land.

Part of the reason for deregulation of telecommunications lies in the belief, perhaps the fact, that rules and regulations and process can never keep up with the progress of technological change and the marketing ingenuity of telecommunications providers. Deregulation is based on a belief that regulation can actually impede progress and prevent customers from realizing the full potential benefits of advances in telecommunications. It is time to begin implementing that belief in the rules for deregulation themselves.

Rather than trying to define and explain the exact meaning of each and every term beforehand, we might better try to keep both the process and the rules necessary to implement the Act to a minimum. One of the easiest ways to do that would be to assume that new competitors can and will work out many of the details that are so hard to define in the abstract. If that works, it leaves to state commissions, and ultimately to the FCC, the less burdensome job of acting as arbitrator, mediator, or interpreter only in those cases where things cannot or should not be worked out by willing parties.

### B. The Virtues of Competition

Moving to a deregulated world need not mean complete abandonment of commitment to the public interest. Consumers will still need some protection. Health and safety will still require some enforcement. But a deregulated world depends on a prior commitment to the promise of benefits from competition, with the need to adjust the outcomes as a secondary and subsidiary process. The best way to move toward competition (whether to prove it can fulfill its promised benefits or to prove it can never work as claimed and will ultimately fail) is to offer minimal rules and regulations that define competition.

The only way to test the proposition that competition will bring benefits to the Nation and to telecommunications customers is to let it happen. Hamstringing competition with classic regulatory processes, even during deregulation, will distort whatever results this test of the market mechanism is expected to bring forth. The process of deregulation should start with the rulemaking itself, with a commitment by the FCC and by state commissions to create a minimal set of rules that emphasizes simplicity, common sense, and ease of administration.

Moving to competition and letting prices respond to market forces so that they more accurately reflect true costs is likely to reduce the inefficiencies associated with regulation and *cut the cost to society of providing* universal service—this cost cutting is the real rationale for the shift toward competition in the Act. But, as noted by the Council of Economic Advisers in its Economic Report to the President (Chapter 6, page 1), "immediate blanket deregulation is not a panacea." Well designed regulations are likely to result ultimately in more competitive markets with more innovation than immediate deregulation could provide. Moreover, until competition develops, it is important to maintain safeguards to protect consumers and to prevent incumbent monopolists from stifling the growth of competition.

We must be mindful that competition requires more than mere choice in order to bring real benefits to customers. Relaxation of regulation in some aspects has already brought us choices that were not available previously. But some still have no phones. The public interest requires more attention to the reality of choice than to the rhetoric. In addition, it is important to ensure that deregulating one group's prices will not shift onto others an increased share of common costs. Increasing competition should not be a cover for cost shifting among customers.

### C. The Connection Between Subscribership and Universal Service

Universal service means defining a range of services and providing necessary support to assure these core services are available even to rural/high-cost/low-income groups as well as to schools and hospitals. We do not believe that competition actually has "enormous potential" to foster the goal of universal service. In fact, we think the connection between these concepts is tenuous.

Subscribership has evidently reached the point of diminishing returns. Further progress will be inordinately expensive and halting. Given those facts, new competitors are not likely to go the "extra mile" to hook up unconnected customers. We should "declare victory" on universal subscribership, allowing only for a few inexpensive items that may offer specific potential for increased subscribership (Voice-Mail for job seekers, rules against disconnect for unpaid toll, easily available information and process for assistance). Existing state experiments are worth following as the only hope for addressing the specific pockets of non-subscribership which persist despite high national subscribership levels.

The significantly lower cost some assume will spur increasing subscribership will be some time coming, if it comes at all, to the remaining pockets of nonsubscribership. For now, the prudent course of action is to concentrate on preservation of what currently exists. We should: 1) quantify

the contribution now made to universal service; 2) use that amount as a sort of target to be achieved by new financing mechanisms, allowing the possibility that the target might actually be lowered over time as cost reductions materialize with competition; 3) set up new methods for sharing the financing burden.

Though competition has long-term potential to help all consumers, for now we should be satisfied with transforming the existing universal service concept into one that is competitively neutral. We cannot let the argument over the size and shape of implicit support get in the way of finding and setting up a mechanism for replacing the explicit portion of universal service. The likely arguments about the size of implicit costs will be formidable, primarily because the incumbent local exchange providers insist on assurance that they incur no stranded costs. Estimation of the size and degree of such costs is a problem that can be dealt with only when it arises. Stranded costs should be limited to net book value and NOT to revenues anticipated with the continuation of the former regulated environment.

## II. COMMENTS ON SPECIFIC ASPECTS OF THE NPRM

### A. Section II, Goals and Principles

Para 3. With respect to the seven principles enumerated, do not go to extremes in interpretation.

a. Abandon the performance-based measurements and incentive-based approach to quality improvement as remnants of an old regulatory environment. Do not try to write a service manual or lengthy list of targets to be achieved. Such micromanagement of monopoly providers was never highly successful and is now inappropriate. Leave primary responsibility for performance to market discipline, with results reflected by customer complaints. A strategy of market reliance requires certainty that customers have good information, and that existing consumer protection laws are

applied to fraudulent and misleading business practices. The ability to choose is not beneficial to customers without comparable formats for pricing or billing information so customers can determine what they are getting. Some general rules for consistency in billing formats would be beneficial to customers and not unduly burdensome on telecommunications providers.

Notice of minimum service capabilities and technical standards is a proper role for federal authority. At the same time, experience in Idaho convinces us that there is a missing component. Service quality vis-a-vis repair and provisioning and customer-to-company contact is equally important as hardware and software standards. It is a less exact but no less important facet of telecommunications service. The states are in the best position to monitor and enforce service quality for the local user. No federal standards are necessary here.

b. It is not clear that states should, or the FCC has, distinguished between access to advanced services and access in rural and high cost areas. We believe principles 2) and 3) should be combined. Our reading of these principles is that reasonably comparable access to advanced services should be available in all areas. This should not be interpreted to mean that every location in the country has exactly the same services in place.

c. With respect to equitable and nondiscriminatory contributions, we believe that, as much as possible, all telecommunications service providers should contribute. On this point, we support the Joint Comments of Maine-Vermont, et al., page 19, that the funding burden should be spread "across all services provided by any and all interstate providers in equal proportion to revenue."

d. With respect to specific and predictable support mechanisms, we believe in creating a system that aggregates all forms of support, so that telecommunications service providers make one contribution, supply one set of appropriate data, deal with one administrator. It is our supposition that NECA is still appropriate as administrator. Asking in the NPRM about neutrality of

administrator perhaps implies dissatisfaction with NECA. We believe NECA has been properly responsive to states and helpful with data requests. On the issue of a continued role for NECA as fund administrator, we concur with the Joint Comments of Maine-Vermont, et al., that the existing system may be an adequate administrative model. While some would argue that competition and bidding should be applied also to the choice of support administrator in hopes of finding someone willing to do it better (cheaper), NECA's historical understanding and backlog of expertise in this endeavor puts it high on a learning curve others would have to climb from the bottom.

Para 8. In the spirit of deregulation and simplification, no special articulation of concerns for low-income, rural, or high-cost areas is desired under the heading of Principle 7, Additional Principles. Such concerns should be included as factors to be considered in determining consistency with the public interest in 254(c)(1)(D). Lack of specific enumeration need not be a reason for lack of attention to these social concerns.

Detailed enumeration is as likely to hamstring the consideration of such issues as to improve the ease with which they can be evaluated. Here especially, it is important to allow states to determine the appropriate means of reaching their specific targeted problem areas. To effectively attack the remaining pockets of nonsubscribership, a micro-based state approach is preferable to a macro-based federal approach.

Para 9. With respect to the criteria specified in 254(c)(1) for definition of services to be supported by federal universal service support mechanisms, do not attempt to specify the exact mode of consideration or the weights attached to each. Defining "essential" will be a problem since specific customer groups are likely to create self-serving definitions of "essential" and be aided and abetted by telecommunication service providers wishing to create markets for specific services. Be

steadfast in requiring evidence of substantial market choice by customers in defining what are essential services. Follow the market here, rather than lead it.

### B. Section III, Support for High Cost and Low Income

The separate enumeration of rural and insular and high cost in the Act is not helpful. These characteristics are useful only to the extent that they result in high cost. On this issue, we recommend the more extensive discussion included in the Joint Comments of Maine-Vermont, et al. We share their aversion to including factors that really do not drive costs as well as their insistence that distributions must be made on the basis of actual costs rather than estimates from proposed proxy models. Inclusion of three different characteristics gives a potentially broader set of criteria for support that is not tightly targeted to the subset of customers unable to receive comparable telecommunications service due to the high cost of serving them.

Para 16. Directory listings and equal access should be added to the list of core services. This is a prime example of a service best provided collectively from a single source, to avoid the waste of resources involved in competing directories and to recognize the importance of such information to customers.

Para 19 and 23. The paragraphs ask whether services "that serve the same general function" as touch-tone should be allowed. In order to achieve competitive neutrality, and to encourage or allow technical innovation, it is important that rules allow the substitution of new services or hardware that is functionally equivalent. For instance, environmental regulation has often suffered from specifying the technology rather than specifying the functionality required.

Para 25. This paragraph seeks to define "affordable" and "reasonably comparable." Affordability is not simply a question of cost, except at extremely low incomes. It is usually also a question of priorities. Those who assert that any increase in the price of basic local service will

lead to substantial declines in subscribership are concentrating only on cost. Both considerations are important.

Economists say demand comes from a combination of ability to pay (a reasonably objective matter) and willingness to pay (a highly subjective consideration). Few things are so expensive they cannot be purchased. Few things are so valuable they will always be purchased. Local phone service in the $15-$25 range (somewhat arbitrarily selected) can almost always be afforded. The question is whether the $15 is better spent on phones than on some other commodity.

Telecommunications advances are likely to continue to stimulate customer demand, "adding value" to what is provided by telecom carriers. To the extent this is true, affordability ought to be enhanced—people should be willing to pay more. At the same time, generally rising incomes over time mean that the same degree of affordability is consistent with some escalation in the cost of telecommunications services. To the extent that telecommunications services decline in price, or even rise less fast than other goods and services, the relative price of telecommunications services is falling, and its affordability rising.

Having pointed out that affordability is less restrictive of basic local exchange price than often asserted, there are at least two reasons why the price of basic local service might stay well within the range of what most would agree is affordable. First is the equity question, whether the basic local exchange should have to bear all or even most of the burden of joint and common costs. Second, an argument can be made that if telco's were to price core services more attractively, people would be induced to buy even more "value-enhancing" additional services and thus contribute more revenue to their telecommunications service provider. The fact that prices probably could rise without drastically reducing subscribership does not mean that they should.

Para 40. Given the concern about increases in the cost of universal service and the major changes possibly required, both an extension of the cap and a short transition period for adjustment to new rules is appropriate.

Para 66-69. It is better to be a little behind than to be too far ahead of the market, but it is vital that provisions be made in the rules for universal service to update the definition of essential services as technology advances. On the other hand, burdensome data collection activities and lengthy hearings mandated at fixed intervals are probably counterproductive.

An earlier White Paper, Revised NARUC Telecommunications Policy Principles, stated wisely that "universal service funding of such services (advanced) is not appropriate unless and until a critical mass of demand develops." The old regulatory advice that might be worthwhile in this instance is, do not use customers' money to experiment.

### C. Section IV, Schools, Hospitals, Health Care Providers

The main concern is that education and health care entrepreneurs, in combination with telecommunications carriers, will "game" the system to enrich them both. Over-pricing services so they can be "discounted" to educational providers by carriers and expensive services provided by health care providers without cost-effective demand for them by customers are dual concerns. There is potential here to enrich both carriers and public service providers at the expense of the general public.

Do not attempt a list of what additional services should be available. The only sound list would be one that is almost behind the technology, limited to what we know can work and be provided now. Technology will quickly outpace such a list, creating a need for further bureaucracy to update and oversee it. Try to make demand a driver with health care providers, more so even than for education.

The best way to deal with these "public service discounts" is to insist on some sharing of facilities, to make sure that whatever is put in place is fully utilized. This requires some sort of joint proposals where that is feasible. The mere fact of sharing of facilities would help alleviate the concerns over excessive demands by such groups, resulting in cost burdens placed on general customers. See also comments on Para 86 below.

Para 77. There is concern about too elaborate a definition actually constraining such institutions to what they have, once a service is provided. Services should be designed with an eye to future expansion possibilities, so that neither the telecommunications service provider nor the institution accepting discounted service is tied into a quickly obsolete format.

We suggest that providers should contribute access to Internet, without definition of what sort of line is most appropriate to allow access now and more data intensive applications in the future. Use of such advanced service could be viewed by the telecommunications provider not simply as a burden associated with universal service but as a magnet to draw new business by demonstrating locally what sorts of information resources are publicly available and to provide an introductory foothold in new markets. This amounts to treating the school or library as an "anchor tenant" allowing cheaper branching and additional services to new customers and locations once an initial presence is developed. Such strategy has the advantage of making the telecommunications providers "bet" on the same stimulation to business that marketing claims their services will provide to businesses and to municipalities. If these services really "add value" then they should generate additional revenues subsequent to these discounted introductions. High tech services available through such public agencies may be the best, if not the only way, to assure services are available to "all regions."

Para 82. Establishing the exact level of discount that is appropriate should be accomplished by picking a number, say 20%, and making use of it provisionally, to see if it is sufficient to stimulate appropriate uptake of services by this class of end users. Such discount should be revised upward or downward based on judgment about its market effect.

Unless one has great faith that competition will emerge quickly and push prices toward costs, the discount should be calculated from cost rather than from retail list price. In a variety of situations for advanced services, there has been no market at the listed price and so it constitutes an inappropriate benchmark for the calculation of discounts. In order to make sure the discount actually has a quantifiable impact on revenues worthy of some sort of support to the carrier, it is important that the discount represents a decrease in actual revenue, not just a theoretical revenue loss to the carrier.

*1. Schools*

Para 84. Dispense almost entirely with steps to ensure that services are used "for educational purposes." It is unreasonable to ask for written certification that such services will be used for education and will not be sold or resold, and equally unreasonable to require carriers annual information on available discounts. This is unnecessary and burdensome paperwork that accomplishes little. Leave each to its own responsibilities, and let them look out for themselves using common sense.

Para 85. Make sure that a school or library districts are the ones asking, to assure that those responsible for schools and libraries have given thought to what fits their needs. Do not attempt to second guess them on what is "bona fide."

Para 86. Though we appreciate the concern about private firms benefiting directly from public discounts, we believe the sale and resale provisions should be relaxed. Widespread provision

of services in a community and the general expansion of demand for telecommunications services should more than offset any small gain that might accrue to a private business along the way. Allowing schools to cost-share with the local community however they can do it is the best way to encourage partnerships, to create potential for further expansion, and to assure full utilization of whatever services are provided to schools. In the alternative, the service provider might perform well in the role of facilitator or initiator of partnerships that combine users to share costs and extend service.

Significant business revenues are not in jeopardy of becoming lost revenue to carriers where businesses must share time and space on the facilities with school uses. After people become convinced of the value of the telecommunications service, there may be potential for expansion beyond what they get with sharing.

Para 87. On all of this, let people read the law and apply. Do not allow carriers or potential recipients of discounted services to insist on a huge set of rules. A statement of self-certification should suffice, if any paperwork is required. Let both sides make their best assessment and proceed, asking the state commission to intervene with a determination if it is asked for by either party. Let the FCC "forbear" on this matter.

Para 88. As noted above in Para 82, if the appropriate discount calculation is simple, figuring the offset will also be. Whatever the basis chosen for the discount, make sure that the discount claimed for reimbursement by the telecommunications provider is a real out-of-pocket contribution. Reimbursement credit against the universal service obligation should not be allowed for estimated revenue loss, but only for actual costs incurred but not recovered.

*2. Health Care Providers*

Para 89. There is not a need for a different set of rules and considerations, one for schools and one for health care providers. Comments for the following paragraphs mirror those found above for schools.

Para 93. Reading all these regulations leads one to suspect this provision of the Act will be looked on as just another subsidy program by the schools and hospitals. They will try to get the rules written to allow or demand what they want, then succeed in shunting off a major portion of cost to general telecom customers. For that reason, these rules and what is required should err on the side of caution. This means that people need to think hard about how and whether they can develop a real market for the telecom services involved. When such a market appears likely, it is then appropriate for telecom policy to provide some incremental boost in the form of discounted service.

Para 99. We want the FCC to avoid adopting a guideline unless it is as simple as something like "within 10%." We would prefer that each state be free to establish its own specific guidelines, within the general outline of the FCC number. Once some guideline is established, it must be adhered to as a condition of receiving interstate support.

Para 100. We wish to commend the FCC for this section. Mention of "requiring less than absolute precision in determining the appropriate rates" sounds appropriate and consistent with the deregulatory spirit of the Act.

Para 103. This caution seems unnecessary, since providers are unlikely to move wholesale to provide unnecessary services to rural areas without large subsidies. If we remember that in the new world of competitive markets the carrier has to sell it, and cannot simply subsidize it with other service, this is not likely to be a major problem.

Para 105-106. Universal service may be, however, one of the last subsidies available to exploit. Where there is concern about either carriers or health care providers combining to produce services really not necessary, one way to alleviate the concern is to make sure that no direct compensation payments are possible. If the best one can get is an offset, that reduces incentives to game the system for financial reward.

### D. Section V, Advanced Services to Schools and Health Care

Section 254 (h)(2)(A) of the Act is already too expansive and precise in defining dedicated data links, linkage via the Internet and ability to access statistics, information on government services, etc. Leave it to schools to define what they consider advanced. "Economically reasonable" is sufficiently unclear as to almost negate the language about "technically feasible." These terms have possibly contradictory meanings, so the gist of the problem is deciding whether to burden the public with the cost of doing whatever can be done technically or to fail to provide a service because some party insists it is not economically reasonable to do so.

Para 109. We do not understand why it is sensible to ask if Sections 254(h)(1) and 254(h)(2) refer to a "broader, narrower, or identical group." We can only assume that the term "advanced services" would not have been introduced at all unless it was supposed to refer to something broader.

Other than discounts and financial support, aside from questions of financial feasibility, the biggest thing anyone could ask to promote rapid deployment would be better training of teachers in what to use and how. They remain the weak link in the whole process of implementing improved information technology, as they are usually "behind" the children in their appreciation of what can be done with technology.

Maybe it would be easiest of all just to make a carrier hook up a high capacity line, and assume something useful would be done with it over time. In good bureaucratic fashion all the questions asked here are identical to those asked in 254(h)(1). Ask the same questions exactly and you will get nearly identical answers. A preferable mode of treating the issue of telecommunications services to schools would be to consolidate Sections IV and V of the NPRM, making the question of what advanced services might be necessary just a subpart of the broader issue of support to education and health care.

### E. Section VI, Other Support Mechanisms

Para 113. This section notes that many commenters have already expressed preference for recovery of costs associated with subscriber lines through a flat nontraffic sensitive charge assessed to end users. Others have expounded the economic rationale for this type of charge, as well as noting that it stimulates the demand for interstate switched services at the same time that it has little impact on subscribership.

Concentration on economic efficiency gains seems to ignore the whole history of the separations issues that resulted in the inception of the carrier common line charge. It was the explicit point of this exercise to achieve a "fair sharing" of costs between inter and intrastate jurisdictions. Until and unless the melding of inter and intrastate business is accomplished within single telecommunications service providers, this separation remains a serious policy issue since the extent of sharing affects not only the sharing of the burden of local and long distance costs between customers, but the profits of individual telecommunications providers.

The Maine-Vermont, et al. comments, pages 14-18, devote more time to the development of the idea that the subscriber line charge was a conscious effort to share the burden of loop nontraffic sensitive costs between inter and intrastate jurisdictions. We concur with the suggestion

that responsibility for paying the subscriber line charge should be transferred from customers to interexchange carriers, thus allowing the marketplace to determine how such costs are ultimately recovered from end users.

Para 117. Instead of arguing about how to divide costs and responsibility for them between inter and intrastate jurisdictions, divide them on roughly the same basis as revenues fall between the jurisdictions. Generally quoted figures show a $100 billion market for local calling and a $70 billion market for long-distance. Use those figures as an allocation factor, sending 40% to interstate and 60% to intrastate, with updates every two years as that ratio changes.

Para 118-120. Define telecommunications service providers as broadly as possible, saying the public interest in preserving universal service after years of regulated monopoly requires as wide a support as possible for this broad social obligation. Universal service is what makes the telecommunications network so valuable, and the expansion of telecommunications markets claimed from this deregulation will redound to the benefit of providers of every stripe. In that light, worry less about specific definitions of who is a provider than about rough guidelines for a set of tight conditions under which exemptions might be granted under Section 254 (d). We would arbitrarily set a number like $200 as the *de minimis* level of contribution (based on some percentage of net revenues). We would also put some sort of sunset on the original percentage required, generating an impetus to revisit the calculation of support and contribution levels on some regular schedule.

Para 121-126. For ease of administration combine this with the TRS procedure, so that any fees assessed are handled as a result of a single contribution and on a single multi-purpose calculation form and methodology.

Para 130. Keep the funds out of state or federal hands. All stakeholders would want a part in the process and we would soon end up with another bureaucracy that needed feeding. Putting

this function out to bid, but allowing the existing administrator as a bidder, is probably the easiest. Where possible, this process should be centralized with one set of simple procedures so that there is minimal possibility for state or federal interference in the conditions of administration.

Para 120 & 139. The sections concern deleterious impacts on small business. If the rules and procedures are kept simple as recommended, this should take care of itself. The contributions in support of the universal service obligation should constitute no unfair burden, financial or otherwise. A small provider earning small revenues would pay only a proportionally small contribution, or nothing at all if below a threshold number.

RESPECTFULLY submitted this 11th day of April 1996.

for

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